IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.148 OF 2007
IN
EXECUTION APPLICATION NO.417 OF 2005
IN
AWARD DATED 25.6.2004

Surendra Kapoor .... Applicant
vs
Shri Prabir Kumar ... Respondent

Mr.Sanjay Jain with Ms.T.Saria i/b S.K. Srivastav &Co for Plaintiff
Mr.Subhash Jha with Ms Lakshmi Menon i.b Law Global for Respondent no.1

CORAM : SMT ROSHAN .S.DALVI, J
DATE: 6th March, 2007

P.C.

1. Pursuant to the award dated 25th June, 2004 a warrant of attachment has been issued attaching Flat No.1B,502 Pataliputra Nagar, Oshiwara, Jogeshwari (West) Mumbai-400102 in Execution Application No. 407 of 2005.

2. The applicant/Judgment Debtor seeks to have the attachment raised and set aside. The application is made upon the case that there is no

agreement between the parties to refer the dispute between them to an Arbitrator and that Film Makers Combine (FMC) which passed the award could not assume to itself the power of arbitrating the case and the reference and/or complaint is made to them alleging breach of the contract between the parties. It is contended that FMC is not an Arbitration Tribunal and that since there is no arbitration agreement between the parties, it did not have the jurisdiction to act as a tribunal and pass the award and consequently its award is a nullity. The attachment levied pursuant to that award is consequently, contended to be void.

3. A complaint is made by the decree holder to the President, Indian Motion Pictures Producers' Association (I.M.P.P.A.) on 3rd December, 2002 Exhibit T to the affidavit in support of the Chamber Summons. The decree holder lodged its complaint in a complaint registration form on 15th February, 2003 showing the particulars in form Exhibit U to the affidavit in support

of the Chamber Summons. A true copy of the agreement between the parties dated 11th January, 1997 came to be attached to the said complaint in complaint registration form. The arbitration proceedings commenced and continued before the FMC. Consequently, the award and their execution came to be passed. The Judgment debtor filed Arbitration Petition No.130 of 2006 challenging the award dated 25th June, 2004. The Arbitration Petition has since been withdrawn in Execution Application for executing the award dated 25th June, 2004 taken out by the decree holder. The Judgment Debtor took out Chamber Summons No.1462 of 2006 to declare the award dated 25th February, 2005 a nullity and for setting it aside and staying the execution thereunder. No interim relief has been granted to the decree holder in that Chamber Summons. The Chamber Summons has been directed to be heard in normal course. Pending that Chamber Summons, this Chamber Summons has been taken out for the same relief.

4. **It** has been the contention of the Judgment Debtor in arbitration proceedings that the matter in dispute between the parties has been settled between them and an agreement dated 11th January, 1997 has been executed in his favour granting him certain broad casting, pay TV and cable TV rights. The Judgment debtor also furnished before the FMC the agreement upon which he relied as also the entire file containing the correspondence between the parties. He also furnished all the original agreements required before the FMC since the agreement relied upon by him was contended to be forgery and a hand writing's opinion was required. In para 6 of the affidavit in support of the Chamber Summons, the Judgment Debtor has shown the proceedings that transpired before the FMC and his role therein.

5. It is contended on behalf of the decree holder that such a claim of the Judgment Debtor before the FMC itself constituted an arbitration agreement under

section 7 (4) (c) of the Arbitration and Conciliation Act, 1996. The statements in para 6 of the affidavit in support do show exchange of statements of claim and defence with regard to arbitration agreement alleged by the decree holder and not denied by the Judgment debtor.

6. Counsel on behalf of the decree holder has also relied upon the provisions of section 4 of the Arbitration and Conciliation Act, 1996 and contended that though the Judgment Debtor now contends that there has been no arbitration agreement between the parties, he has proceeded before the FMC without objection with regard to the arbitration agreement and consequently must be deemed to have waived his right to object on that ground now.

7. Counsel for the decree holder also contended that even in previous Chamber Summons, the fact of arbitral award being passed and arbitration

proceedings having taken place has been mentioned by the Judgment debtor himself. Under the circumstances, he contends that it is too late in the day to challenge the award as a nullity.

8. Counsel for the Judgment Debtor has relied upon the judgment of this Court in Chamber Summons No.850 of 2003 in Execution Application No.216 of 2003 decided on 15th December, 2003 in the case of **Pride of Asia Films vs Essel Vision** in which a complaint similar to the complaint of the decree holder resulting in arbitration award has been held to be a nullity and set aside. He relied upon specifically the expression " N.A." in the complaint registration form with regard to the date of the contract and the arbitration clause therein as is in form Exhibit U to the affidavit in support of the Chamber Summons herein. In that case the parties executed what was called an u ndertaking to jointly agree to submit their disputes to FMC for adjudication and accept its decision as final

and binding. A meeting consisting 13 members of the committee heard the representation of the case of the complainant. Certain negatives of the film which handed over by the complainant to the respondents (stated as the applicant therein) were not returned and was stated to be lost. The committee heard both the parties and decided that the applicant shall pay " adequate compensation amount of which has to be fixed by ....."

9. Since only one member of the committee had to fix the compensation payable and the parties were not heard upon such fixation, the court in that case decided that proceedings before FMC were not arbitration proceedings at all and that the award passed by FMC did not have force of a decree of the court. In that case, it was shown that there was no arbitration agreement, there is no meeting of minds between the parties on a reference to arbitration and there was no tribunal before whom the disputes and

differences between the parties were argued resulting in a reasoned award. It was observed in that case that the proceedings were not conducted in a judicial manner and consequently the decree/award become unexecutable. It was observed that the proceedings merely in the nature of the undertaking by parties militated against the actions fundamental to the law about the conduct of the proceedings in relation to arbitration.

10. In this case, the fact that the decree holder appeared before the FMC and informed the FMC about the statement of their disputes by the agreement dated 11th January, 1997 and the fact that he handed over the agreement alongwith the other original agreement and correspondence to the FMC showed his acceptance of the arbitration proceedings.

11. It may be mentioned that it is not alleged that one member of the FMC has passed the arbitral award

in this case as was in the cased cited by counsel for the Judgment Debtor. Consequently, the observations in that judgment that the decision of the Chairman of the Committee or sub-committee or the decision of one of the members of the FMC is being fundamentally inconsistent with the nature of judicial process does not apply to this case and hence the observations that in that case the proceedings could not be termed arbitral proceedings and the compensation which was determined not on the basis of evidence adduced before the committee, the amount which was fixed by one of the members and so was inconsistent with justice and fairness, would not apply to this case. The appearance before the FMC and the submission of the agreement dated 11th January, 1997 by the Judgment debtor before the FMC along with other documents relied upon by him constitute his waiver of the right to object that there was any arbitration agreement between the parties.

12. It is seen that the case of the Judgment debtor brought out before the FMC has been considered on merits upon the documents submitted by the Judgment debtor in reply to the complaint of the decree holder before the FMC. The challenge to the award passed upon considering the documents of the judgment debtor, therefore, cannot be challenged as nullity.

13. Since that is only challenge in this Chamber Summons, nothing further need be seen. The court cannot go behind the arbitration award dated 25th June, 2004. Execution Application taken out for executing the award by the decree holder/original complainant against the judgment debtor must, therefore, be allowed to proceed and Chamber Summons NO.148of 2007 is therefore dismissed. Counsel for the judgment debtor applies for withdrawal of the earlier Chamber Summons No. 1462 of 2006 Chamber Summons No.1462 of 2006 is allowed to be

withdrawn. Since no interim relief has been granted in this Chamber Summons, none can be granted at this stage.

(Smt Roshan Dalvi, J)